



**DEVELOPMENT OF AMENDMENTS TO RULES AT 329 IAC 10-20 AND 329 IAC 10-39 CONCERNING SOLID WASTE LAND DISPOSAL FACILITIES; FINANCIAL RESPONSIBILITY AND ANNUAL REVIEW AND ANNUAL SURVEY RESULTS
#05-167(SWMB)**

Overview

This rulemaking involves changes to make the rule clearer and more concise regarding post closure funding, the annual survey and annual flyover.

Citations Affected

329 IAC 10-20-24; 329 IAC 10-39-2; and 329 IAC 10-39-3.

Affected Persons

Owner, operators, or permittees of solid waste land disposal facilities.

Reason(s) for the Rule

The changes regarding the trust fund are being proposed to protect the state of Indiana financially. If a landfill goes bankrupt before post-closure is fully funded, the state could be left with post-closure costs. The current rule is not as stringent as the federal regulation regarding trust funds and the allowance for other mechanisms to be annually funded. The proposed requirements to submit the two annual reports on the same day are for the convenience of the regulated community. The proposed changes will make the rule consistent with federal regulations and provide greater clarity to the regulated community.

Economic Impact of the Rule

There should be no economic impact to the regulated community and to state government, as all changes are already required by the federal rule and under the current state rule. However, due to a previous interpretation of the state rule arising from unclear language, some owner/operators or permittees of solid waste land disposal facilities may be required to obtain complete post-closure funding within a shorter time.

Benefits of the Rule

The changes regarding the trust fund will protect the state of Indiana financially. If a landfill goes bankrupt before post-closure is fully funded, the state could be left with post-closure costs. The proposed changes to submit the two annual reports on the same day are for the convenience of the regulated community. The proposed changes will make the rule consistent with federal regulations and provide clarity.

Description of the Rulemaking Project

This rulemaking involves changes to the post-closure trust fund rule language to only allow annual payments for trust funds and to require the trust fund to be fully funded within the term of the initial permit or the life of the permitted unit, whichever is shorter. This rule would allow post-closure funding mechanisms, other than the trust fund, to be appropriately fully funded based on a formula that takes into account the acreage that will be certified to begin placing waste. In addition, the annual survey

(flyover) would take place between December 1 and March 31, with both the annual review of the financial closure and post-closure estimate and the annual survey (flyover) submitted on the same date, June 15, each year.

Scheduled Hearings

First Public Hearing: July 18, 2006, 1:30 p.m., Indiana Government Center South, Conference Center Room A. Hearing continued to September 19, 2006.

Second Public Hearing: January 16, 2007, 1:30 p.m., Indiana Government Center South, Conference Center Room A.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- 7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
 - (A) human, plant, animal, or aquatic life; or
 - (B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

This rule will be consistent with all federal requirements.

Rulemaking Process

The first step in the rulemaking process is a first notice published in the *Indiana Register*. This includes a discussion of issues and opens a first comment period. The second notice is then published that contains the comments and the departments responses from the first comment period, a notice of first meeting/hearing, and the draft rule. The Solid Waste Management Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule must be approved by the Attorney General and the Governor. When approved, the rule becomes effective 30 days after filing with the Indiana

Register.